

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

CLARENCE H. BROWN,

Defendant/Petitioner,

v.

Case No. 05-80101

UNITED STATES OF AMERICA,

Honorable Arthur J. Tarnow  
Senior United States District Judge

Plaintiff/Respondent.

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**ORDER DENYING ISSUANCE OF  
CERTIFICATE OF APPEALABILITY [124]  
and  
GRANTING PETITIONER'S MOTION FOR LEAVE TO PROCEED *IN FORMA  
PAUPERIS* [125]**

Before the Court are 1) Petitioner's Motion for Certificate of Appealability [124] and 2) Petitioner's Motion for Leave to Proceed *In Forma Pauperis* [125].

On November 30, 2010, this Court denied Petitioner's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence [120]. On January 21, 2011, this Court denied Petitioner's Motion to Alter or Amend [123]. On February 14, 2011, Petitioner filed a Motion for Certificate of Appealability [124] of Orders [120] and [123]. The same day, Petitioner filed a Motion for Leave to Proceed *In Forma Pauperis* on Appeal [125]. Petitioner filed a Notice of Appeal [126] of the Court's Orders [120] and [123]. For the reasons set forth below, the Court denies Petitioner's Motion for Certificate of Appealability and grants Petitioner's Motion to Proceed *In Forma Pauperis*.

A. Certificate of Appealability (COA)

An appeal may not be taken from the final order of a district court denying a motion filed pursuant to 28 U.S.C. § 2255 unless a COA issues. 28 U.S.C. § 2253(c)(1)(B) (2006); Fed. R. App. P. 22(b). A COA may be issued “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).

In *Slack v. McDaniel*, 529 U.S. 473 (2000), the United States Supreme Court explained:

such a showing requires the petitioner to demonstrate that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were “adequate to deserve encouragement to proceed further.”

Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong. *Id.* at 484 (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 and n. 4 (1983)).

Petitioner raised many arguments in his § 2255 motion and in his motion to alter or amend. The Court issued detailed orders analyzing those arguments. *See* Dkt. [120], [123]. For the same reasons the Court denied those motions, the Court now declines to issue a certificate of appealability. No reasonable jurist could agree with the Petitioner that the Court’s assessment of the constitutional claims was debatable or wrong. *See Slack*, 529 U.S. at 484. The Court declines to issue a COA.

B. Leave to Proceed *In Forma Pauperis*

Petitioner has filed an application to proceed on appeal *in forma pauperis*. Pursuant to Federal Rules of Appellate Procedure Rule 24, a petitioner must file a motion, accompanied by an affidavit that:

(A) shows in the detail . . . the party's inability to pay or to give security for fees and costs;

(B) claims an entitlement to redress; and  
(C) states the issues that the party intends to present on appeal.

Fed. R. App. P. 24(a)(1).

Petitioner has satisfied the standard. Petitioner's Motion for Leave to Proceed *In Forma Pauperis* shows his inability to pay. Petitioner's Notice of Appeal [126] claims an entitlement to redress and states the issues that he intends to present on appeal.

Therefore,

**IT IS ORDERED** that Petitioner's Motion for Certificate of Appealability [124] is **DENIED**.

**IT IS FURTHER ORDERED** that Petitioner's Motion to Proceed *In Forma Pauperis* [125] is **GRANTED**.

**SO ORDERED.**

Dated: April 14, 2011

S/ARTHUR J. TARNOW

Arthur J. Tarnow

Senior United States District Judge

I hereby certify that a copy of the foregoing document was served upon

Clarence Howard Brown  
39279039  
United States Penitentiary  
P O Box 26030  
Beaumont, TX 77720

and counsel of record on April 14, 2011, by electronic and/or ordinary mail.

S/MICHAEL L. WILLIAMS

Case Manager